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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St SW
Washington, DC 20554

In the matter of:

Commander Communications Corporation
FM Broadcast Class C4 & §74.215 Changes

Informal Objection
Ex parte letter

BMPH-20180621AAK
MB Docket 18-184
RM-11727

June 24, 2018

Dear Ms. Dortch:

On behalf of REC Networks (REC), I am making this statement for the record regarding the June 21, 2018 amendment to the above captioned broadcast construction permit modification application.¹ In that application, Commander Communications Corporation (CCC) is proposing to operate station WRTM-FM at 12 kW at 100 meters above average terrain from their currently authorized site (Commander Application) and requesting waivers in anticipation of the C4 service class proposed in MB Docket 18-184. In CDBS, this facility has been specified as a Class C3.

As a Class C3 station, WRTM-FM would be short-spaced to WNSL, Laurel, MS (BMLH-20060918AHV) where the station is located 141.7 km from. This comes short of the 163 km spacing that is required under §73.207 or 152 km under §73.215 of the Commission's Rules.² WRTM-FM is also short-spaced to WDMS, Greenville, MS, where WRTM-FM is 133.7 km away and must be 144 km under §73.207 of the Commission's Rules.³

¹ - This filing of this letter on the broadcast modification application should be considered an *Informal Objection* and filed in accordance with §73.3587 of the Commission's Rules.

² - See §73.207(b)(1) and §73.215(e).

³ - See Id.

Normally, a proposal like this would be dismissed as defective due to the short-spacing.⁴ After a telephone consultation last Friday with Matt Wesolowski of SSR Communications (SSR) and also based on previous *ex parte* presentations made by SSR, the author of RM—11727, which was used to produce the Commission’s *Notice of Inquiry* in MB Docket 18-184.⁵ It appears that this application is a “test case” for a waiver process that was discussed in the various meetings SSR had with Commission staff.⁶

At this time, REC is not prepared to make any comments or opinions about the overall nature of the *Notice of Inquiry*, but we will reserve our right to do so prior to the to-be-announced comment and reply comment filing deadlines. We will note that in REC’s comments in RM-11727, we have advocated for the minimum distance separation between LPFM stations and the proposed Class C4 stations to be the same values in §73.807(a) as the values for LPFM stations for Class A full-service stations on co- and first-adjacent channels.⁷ REC and SSR have reached a mutual agreement to support this change. This means that while an upgrade from Class A to Class C4 could cause increased noise floor to an LPFM in some cases, it will not cause a situation where an LPFM station is suddenly short-spaced at their current location thus restricting moves where a move may still be feasible.

REC’s concern is regarding the use of Class C3 in CDBS for this proposed facility. It is our understanding that CDBS is equipped with edits that prohibit a Class A station from requesting more than 6 kW effective radiated power (ERP). Therefore, in order to clear the edit, the user has to select Class C3.

For LPFM stations, §73.807(a) specifies that LPFM stations will protect Class A licensed facilities, pending applications and allotments out to 67 km for co-channel and 56 km for first-adjacent channel. For protection to Class C3 stations, the rule specifies 78 km for co-channel and 67 km for first-adjacent channel.⁸ This means that a pending application for an upgrade from a Class A to Class C3 will add an additional 11 km of separation required. We note that there may be LPFM stations within that 11 km zone between the Class A and C3 limits will now be short-spaced nor can any LPFM station needing to move would be able to specify facilities that are short-spaced to a Class C3 station even though they would be properly spaced to a

⁴ - See §73.3566(a).

⁵ - We note that to assure that *ex parte* rules are being met, REC will be placing a copy of this letter in MB Docket 18-184 and RM-11727. In addition, a copy of this pleading will be sent to SSR via e-mail under a previously-reached agreement between SSR and REC.

⁶ - See *Notice of MB 18-184 / RM-11727 Ex-Parte Presentation*, SSR Communications, Inc., MB Docket 18-184. (Received: June 20, 2018). (“SSR ex-parte”)

⁷ - See RM-11727, *Comments of REC Networks*, pages 7 and 8.

⁸ - See 47 C.F.R. §73.807(a).

Class A facility.⁹ We note that for WRTM-FM, there are two LPFM stations (WVMK-LP and WDON-LP) that are within that zone (between 67 and 78 km from WRTM-FM).

REC is aware that this may be just a “test case” and that SSR has no intentions of filing any more of these applications. We are afraid that others may copy the points in their pleading and file applications on their own station, especially since this is only a *Notice of Inquiry* and not a *Notice of Proposed Rulemaking*.¹⁰ It is our understanding that this application will never be granted as a C3 however, being in the database as a C3 keeps a radius of 11 km of spectrum which could preclude LPFM stations from making some modifications where such a modification was possible with a co-channel or first-adjacent channel Class A station.

On page 2 of the instant waiver request, we do note that CCC states that “these gains can be achieved without *impacting* the primary service area of any neighboring full power or secondary station (i.e. no LPFM or translator station will be affected)” (*emphasis added*). In an attempt to demonstrate that, the applicant provides a contour map showing the protected contour of the full-service station versus the interfering contour of FM translator W262DE, Yazoo City, MS. What CCC did not show was the *impact* of this proposed upgrade to that translator. Currently, as a 6 kW Class-A facility, WRTM-FM does place a 54 dBu interfering contour over a portion of the 60 dBu service contour of W262DE affecting 675 persons. With the short-spaced waiver facilities being requested, the interfering contour over W262DE will increase in size to impact 16,655 persons. While this may not directly result in a displacement, these short-spaced facilities would definitely *impact* that translator by introducing new interference to over 16,000 potential listeners by a facility that is short-spaced under the current rules.

Overall, we are not as much concerned about this specific application as we would be of any potential copycat applicants filed by other licensees seeking an upgrade utilizing a similar waiver request, especially if there may be as long as a two-year period from NOI to NPRM to *Report and Order (R&O)*. Therefore, REC is asking for the following in this and any other future proceedings involving similar requests for a waiver in advance of MB Docket 18-184: All applications that were filed under the type of waiver request presented in the instant case, despite their short-spacings were issued as a Class C3 facility be considered for the purposes of §73.807(a) of the rules as a Class A station.

Therefore, in order to assure that these applications, which specify Class C3 facilities but do not meet the §73.207 or §73.215 minimum distance separation requirements for Class C3 and any kind of a grant that may take place prior to the adoption of rules in MB Docket 18-184,

⁹ - See *Id.* (“LPFM modification applications must either meet the distance separations [...] or if short-spaced, not lessen the spacing to subsequently authorized stations.”)

¹⁰ - When the original rules for §73.215 were first discussed, it started as a *Notice of Inquiry* released on May 26, 1987. See 2 FCC Rcd 3141. It would not go to NPRM until March 30, 1988, see 3 FCC Rcd 1820. The *Report and Order* would not get adopted until February 22, 1989, see 4 FCC Rcd 1681. A process of nearly two years.

REC is asking that for pending applications (including dismissed applications pending finality), that these proposed facilities be considered as Class A in respect to the LPFM station spacing requirements of §73.807(a) of the Commission's Rules. In the event that the Commission grants a construction permit or license application based on this waiver prior to the adoption of a *Report and Order* in MB Docket 18-184, REC is requesting that all permits and licenses carry a condition which states:

IN RESPECT TO THE DISTANCE SEPARATION REQUIREMENTS OF FULL-SERVICE FM STATIONS BY LOW POWER FM STATIONS IN ACCORDANCE WITH §73.807(A), THIS FACILITY IS TO BE PROTECTED AS A CLASS A FULL-SERVICE FM FACILITY. IF, FOLLOWING A REPORT AND ORDER IN MB DOCKET 18-184, THAT A NEW C4 STATION CLASS IS CREATED, THIS FACILITY IS TO BE PROTECTED AS A CLASS C4 FULL-SERVICE FM FACILITY.

What that too, if the Commission decides to even consider these waivers long before we have an actual rule in place for §73.215 or Class C4, then perhaps the proper forum for this kind of a change should not be a waiver request but instead through Special Temporary Authority (STA). We do ask though that any gain area outside the licensed facility be considered "secondary" and can only be granted in cases where the proposed facility does not create or increase interfering contour overlap with any authorized primary or "co-secondary" station including LPFM and FM translators. We also note that if the FCC grants these facilities either through waiver or through STA, it is creating a culture where any proposed service (including the upgrade of LPFM stations to 250 watts) could be achievable through a waiver or STA process even in the absence of a natural disaster. Is this the road we want to go down?

REC is concerned that during this proceeding, that this type of waiver request will be used to intentionally or unintentionally warehouse spectrum and preclude LPFM modification opportunities as a result of *prima facie* cases of defective applications caused by a Commission system (CDBS) limitation. Honoring these proposed facilities as Class A instead of Class C3 during the pendency of the underlying proceeding will assure that LPFM opportunities are not precluded due to distance separation. An objective of Class C4 that both REC and SSR agree on. In the alternate, we ask the Audio Division staff to dismiss any additional applications that are filed outside of the coordination with SSR in connection with the waiver concept introduced in their in-person and telephonic meetings with Commission Staff on June 18 and 20, 2018.¹¹

While we can understand why this waiver request was filed, it appears to be an attempt to "jump the gun" and waive the rules to create a new service class without the full due process of a rulemaking proceeding. We note that at this time, the proposed Class C4 and §73.215 are merely in a *Notice of Inquiry* and not in a *Notice of Proposed Rulemaking*. There is currently not even an expectation that the Commission will even forward either of these proposals to an NPRM.

¹¹ - Id.

Waiver requests face a high hurdle, even at the starting gate but we do acknowledge that all waiver requests should be given a hard look.¹² We have seen cases where the Commission has granted power levels beyond that of their authorized service class such as in *Hancock County Amateur Radio Association, Inc.* (WQRZ-LP) and *Wimberley Valley Radio* (KVVH-LP) where special temporary authority was granted due to natural disasters such as was the case for WQRZ-LP, where it was the only signal on the air in the area during Hurricane Katrina. Historically, grants of increased power have been given to AM broadcast stations facing interference from Cuba.¹³ While this waiver would help some listeners receive more reliable FM service, it would also be a detriment to listeners who currently rely on secondary FM translators that would be impacted by the grant of this waiver. As a side benefit to CCC, this will help them economically as they would have a stronger presence in the Jackson, MS Urbanized Area, a purely economic reason. This is a far cry from a hurricane, wildfire or interference from a foreign government.

REC has demonstrated that in this instant waiver request, this “experimental” short-spaced facility would cause increased interference to an FM translator.¹⁴ It is only appropriate that the *Notice of Inquiry* and any subsequent *Notice of Proposed Rulemaking* be first carried out and we have a full and complete record. This way, all parties interested in this proceeding will have due process and an opportunity to comment.

Therefore, we must oppose this waiver request and insist that any other attempts for waivers or STAs citing the pendency of Class C4 or the proposed changes to §73.215 must continue to recognize the facility as Class A throughout the pendency of the application and until after the time when the dismissal is finalized and if a grant was to take place, that facility continue to be regarded as a Class A facility in respect to LPFM stations.

Respectfully submitted,
/S/
Michelle Bradley
Founder
REC Networks

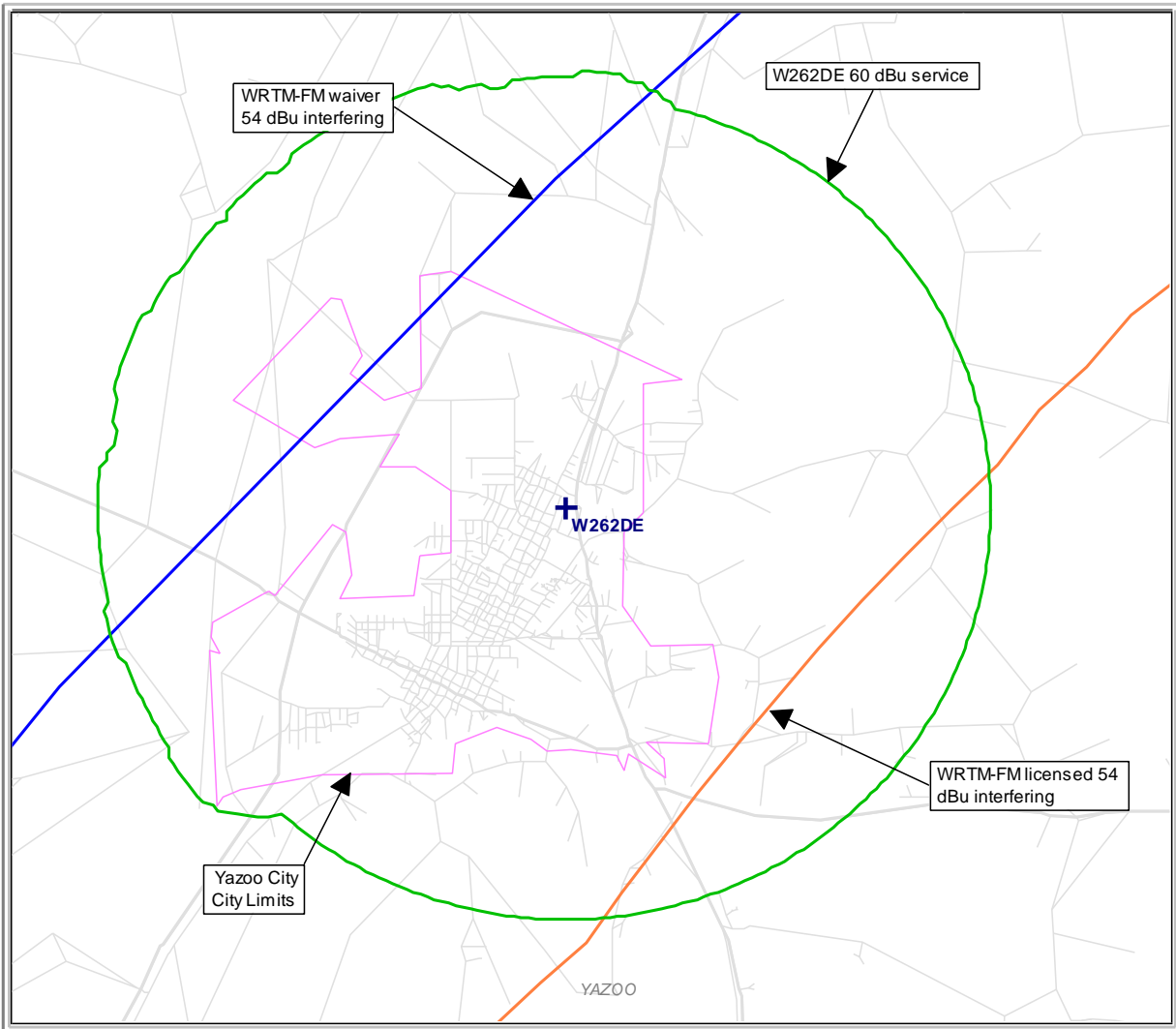
CC: Applicant (served via e-mail).

¹² - See *WAIT Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F. 2d 1203 (1972), *cert. denied*, 93 S. Ct. 461 (1972). See also *Thomas Radio v. FCC*, 716 F. 2d 921, 924 (D.C. Cir. 1983).

¹³ - See *Lincoln Financial Media Company of Florida*, Special Temporary Authority, letter from Charles N. Miller, Engineer, Audio Division, Media Bureau. (Facility ID # 30837, December 27, 2011) (Permits a power increase from 5 kW to 25 kW due to station WAXY receiving interference from a cochannel Cuban station. Originally granted on December 23, 1981.)

¹⁴ - If the higher-powered operation was considered an “experimental” operation, it would result in objectional interference to the regular program transmissions of a broadcast station, in this case, W262DE. See 47 C.F.R. §5.205(b)

WRTM-FM impacts to W262DE Yazoo City, MS



R E C NETWORKS
CHANNEL REPORT

NAD27 LATITUDE: 32 - 31' 19.5" - LONGITUDE: 90 - 04' 35.7"
CHANNEL: 263 - CLASS: C3_215

CHAN	FREQ	CALL	LOCATION	CLS	DIST	REQ	CLEAR	BEAR
260	99.9	WSMS : CUMULUS LICENSING LLC	ARTESIA	MS C2	185.0	50.0	135.0	46.7
260	99.9	KGPQ : PINES BROADCASTING, INC.	MONTICELLO	AR C3	210.5	37.0	173.5	310.1
260	99.9	KTDY : TOWNSQUARE MEDIA OF LAFAYETTE, LLC	LAFAYETTE	LA C	303.9	90.0	213.9	212.4
260	99.9	WMXC : CC LICENSES, LLC, AS DEBTOR IN POSSESSION	MOBILE	AL C	294.5	90.0	204.5	133.2
261	100.1	WQXB : THE RAYANNA CORP.	GRENADA	MS C2	148.7	50.0	98.7	5.5
261	100.1	WIWT-LP : CHURCH IN JACKSON, INC.	JACKSON	MS L1	17.1	0.0	17.1	203.9
262	100.3	WNSL : CC LICENSES, LLC, AS DEBTOR IN POSSESSION	LAUREL	MS C0	141.7	152.0	-10.3	141.0
262	100.3	WVMK-LP : VICKSBURGS VOICE FOR EDUCATION AND HEALTH	VICKSBURG	MS L1	76.7	0.0	76.7	254.6
262	100.3	W262DE : ZOO-BEL BROADCASTING LLC	YAZOO CITY	MS D2	48.6	0.0	48.6	322.2
263	100.5	WBLE : BATESVILLE BROADCASTING CO., INC.	BATESVILLE	MS C2	208.0	166.0	42.0	7.8
263	100.5	WRTM-FM : COMMANDER COMMUNICATIONS CORPORATION	SHARON	MS A	0.0	119.0	-119.0	334.1
263	100.5	WRTM-FM : COMMANDER COMMUNICATIONS CORPORATION	SHARON	MS A	0.0	119.0	-119.0	334.1
263	100.5	WJQX : RADIO LICENSE HOLDING CBC, LLC	HELENA	AL C1	271.8	200.0	71.8	75.6
263	100.5	WRTM-FM : COMMANDER COMMUNICATIONS CORPORATION	SHARON	MS C3	0.0	142.0	-142.0	334.1
264	100.7	WDMS : HIGH PLAINS RADIO NETWORK, LLC	GREENVILLE	MS C1	133.7	133.0	0.7	318.6
265	100.9	WJXN-FM : FLINN BROADCASTING CORPORATION	UTICA	MS C2	57.6	50.0	7.6	205.4
266	101.1	WLIN-FM : BOSWELL MEDIA, LLC	DURANT	MS A	74.7	36.0	38.7	36.1
266	101.1	WWUU : FIRST NATCHEZ RADIO GROUP INC	WASHINGTON	MS A	163.4	36.0	127.4	229.2